

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2219

Introduced by Assembly Member Fuentes

February 18, 2010

~~An act to amend Section 72031 of the Education Code, relating to Los Angeles Community College District. An act to amend Section 44944 of the Education Code, relating to school employees.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2219, as amended, Fuentes. ~~Los Angeles Community College District. School employees.~~

Existing law establishes notice and hearing requirements for the dismissal or suspension of a permanent employee of a school district on specified grounds, and requires the Commission on Professional Competence to conduct a hearing upon the employee's request. Under existing law, if the commission determines that the employee should be dismissed or suspended, the governing board and the employee are required to share equally the expenses of the hearing.

This bill would instead require either the governing board of the school district or the state to pay those expenses.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~Existing law establishes the California Community Colleges, under the administration of the Board of Governors of the California Community Colleges, as one of the segments of public postsecondary education in this state. Existing law establishes community college districts, administered by a governing board, throughout the state, and authorizes these districts to provide instruction to students at the community college campuses maintained by the districts.~~

~~Existing law requires members of the governing board of the Los Angeles Community College District to be elected at large in a specified manner and provides that specified statutory references apply to the community college district.~~

~~This bill would make technical, nonsubstantive changes in those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 44944 of the Education Code is amended
2 to read:
3 44944. (a) (1) In a dismissal or suspension proceeding initiated
4 pursuant to Section 44934, if a hearing is requested by the
5 employee, the hearing shall be commenced within 60 days from
6 the date of the employee's demand for a hearing. The hearing shall
7 be initiated, conducted, and a decision made in accordance with
8 Chapter 5 (commencing with Section 11500) of Part 1 of Division
9 3 of Title 2 of the Government Code. However, the hearing date
10 shall be established after consultation with the employee and the
11 governing board, or their representatives, and the Commission on
12 Professional Competence shall have all of the power granted to
13 an agency in that chapter, except that the right of discovery of the
14 parties shall not be limited to those matters set forth in Section
15 11507.6 of the Government Code but shall include the rights and
16 duties of any party in a civil action brought in a superior court
17 under Title 4 (commencing with Section 2016.010) of Part 4 of
18 the Code of Civil Procedure. Notwithstanding any provision to the
19 contrary, and except for the taking of oral depositions, no discovery
20 shall occur later than 30 calendar days after the employee is served
21 with a copy of the accusation pursuant to Section 11505 of the
22 Government Code. In all cases, discovery shall be completed prior

1 to seven calendar days before the date upon which the hearing
2 commences. If any continuance is granted pursuant to Section
3 11524 of the Government Code, the time limitation for
4 commencement of the hearing as provided in this subdivision shall
5 be extended for a period of time equal to the continuance. However,
6 the extension shall not include that period of time attributable to
7 an unlawful refusal by either party to allow the discovery provided
8 for in this section.

9 (2) If the right of discovery granted under paragraph (1) is
10 denied by either the employee or the governing board, all of the
11 remedies in Chapter 7 (commencing with Section 2023.010) of
12 Title 4 of Part 4 of the Code of Civil Procedure shall be available
13 to the party seeking discovery and the court of proper jurisdiction,
14 to entertain his or her motion, shall be the superior court of the
15 county in which the hearing will be held.

16 (3) The time periods in this section and of Chapter 5
17 (commencing with Section 11500) of Part 1 of Division 3 of Title
18 2 of the Government Code and of Title 4 (commencing with
19 Section 2016.010) of Part 4 of the Code of Civil Procedure shall
20 not be applied so as to deny discovery in a hearing conducted
21 pursuant to this section.

22 (4) The superior court of the county in which the hearing will
23 be held may, upon motion of the party seeking discovery, suspend
24 the hearing so as to comply with the requirement of the preceding
25 paragraph.

26 (5) No witness shall be permitted to testify at the hearing except
27 upon oath or affirmation. No testimony shall be given or evidence
28 introduced relating to matters that occurred more than four years
29 prior to the date of the filing of the notice. Evidence of records
30 regularly kept by the governing board concerning the employee
31 may be introduced, but no decision relating to the dismissal or
32 suspension of any employee shall be made based on charges or
33 evidence of any nature relating to matters occurring more than
34 four years prior to the filing of the notice.

35 (b) (1) The hearing provided for in this section shall be
36 conducted by a Commission on Professional Competence. One
37 member of the commission shall be selected by the employee, one
38 member shall be selected by the governing board, and one member
39 shall be an administrative law judge of the Office of Administrative
40 Hearings who shall be chairperson and a voting member of the

1 commission and shall be responsible for assuring that the legal
2 rights of the parties are protected at the hearing. If either the
3 governing board or the employee for any reason fails to select a
4 commission member at least seven calendar days prior to the date
5 of the hearing, the failure shall constitute a waiver of the right to
6 selection, and the county board of education or its specific designee
7 shall immediately make the selection. If the county board of
8 education is also the governing board of the school district or has
9 by statute been granted the powers of a governing board, the
10 selection shall be made by the Superintendent, who shall be
11 reimbursed by the school district for all costs incident to the
12 selection.

13 (2) The member selected by the governing board and the
14 member selected by the employee shall not be related to the
15 employee and shall not be employees of the district initiating the
16 dismissal or suspension and shall hold a currently valid credential
17 and have at least five years' experience within the past 10 years
18 in the discipline of the employee.

19 (c) (1) The decision of the Commission on Professional
20 Competence shall be made by a majority vote, and the commission
21 shall prepare a written decision containing findings of fact,
22 determinations of issues, and a disposition that shall be, solely,
23 one of the following:

24 (A) That the employee should be dismissed.

25 (B) That the employee should be suspended for a specific period
26 of time without pay.

27 (C) That the employee should not be dismissed or suspended.

28 (2) The decision of the Commission on Professional Competence
29 that the employee should not be dismissed or suspended shall not
30 be based on nonsubstantive procedural errors committed by the
31 school district or governing board unless the errors are prejudicial
32 errors.

33 (3) The commission shall not have the power to dispose of the
34 charge of dismissal by imposing probation or other alternative
35 sanctions. The imposition of suspension pursuant to subparagraph
36 (B) of paragraph (1) shall be available only in a suspension
37 proceeding authorized pursuant to subdivision (b) of Section 44932
38 or Section 44933.

39 (4) The decision of the Commission on Professional Competence
40 shall be deemed to be the final decision of the governing board.

1 (5) The board may adopt from time to time rules and procedures
2 not inconsistent with this section as may be necessary to effectuate
3 this section.

4 (6) The governing board and the employee shall have the right
5 to be represented by counsel.

6 (d) (1) If the member selected by the governing board or the
7 member selected by the employee is employed by any school
8 district in this state, the member shall, during any service on a
9 Commission on Professional Competence, continue to receive
10 salary, fringe benefits, accumulated sick leave, and other leaves
11 and benefits from the district in which the member is employed,
12 but shall receive no additional compensation or honorariums for
13 service on the commission.

14 (2) If service on a Commission on Professional Competence
15 occurs during summer recess or vacation periods, the member shall
16 receive compensation proportionate to that received during the
17 current or immediately preceding contract period from the
18 member's employing district, whichever amount is greater.

19 (e) (1) If the Commission on Professional Competence
20 determines that the employee should be dismissed or suspended,
21 ~~the governing board and the employee shall share equally the~~ *either*
22 *the state or the governing board shall pay the* expenses of the
23 hearing, including the cost of the administrative law judge. The
24 state shall pay any costs incurred under paragraph (2) of
25 subdivision (d), the reasonable expenses, as determined by the
26 administrative law judge, of the member selected by the governing
27 board and the member selected by the employee, including, but
28 not limited to, payments or obligations incurred for travel, meals,
29 and lodging, and the cost of the substitute or substitutes, if any,
30 for the member selected by the governing board and the member
31 selected by the employee. The Controller shall pay all claims
32 submitted pursuant to this paragraph from the General Fund, and
33 may prescribe reasonable rules, regulations, and forms for the
34 submission of the claims. The employee and the governing board
35 shall pay their own attorney's fees.

36 (2) If the Commission on Professional Competence determines
37 that the employee should not be dismissed or suspended, the
38 governing board shall pay the expenses of the hearing, including
39 the cost of the administrative law judge, any costs incurred under
40 paragraph (2) of subdivision (d), the reasonable expenses, as

1 determined by the administrative law judge, of the member selected
2 by the governing board and the member selected by the employee,
3 including, but not limited to, payments or obligations incurred for
4 travel, meals, and lodging, the cost of the substitute or substitutes,
5 if any, for the member selected by the governing board and the
6 member selected by the employee, and reasonable attorney's fees
7 incurred by the employee.

8 (3) As used in this section, "reasonable expenses" shall not be
9 deemed "compensation" within the meaning of subdivision (d).

10 (4) If either the governing board or the employee petitions a
11 court of competent jurisdiction for review of the decision of the
12 commission, the payment of expenses to members of the
13 commission required by this subdivision shall not be stayed.

14 (5) ~~(A)~~ If the decision of the commission is finally reversed or
15 vacated by a court of competent jurisdiction, either the state, having
16 paid the commission members' expenses, shall be entitled to
17 reimbursement from the governing board for those expenses, or
18 the governing board, having paid the expenses, shall be entitled
19 to reimbursement from the state.

20 ~~(B) Additionally, either the employee, having paid a portion of~~
21 ~~the expenses of the hearing, including the cost of the administrative~~
22 ~~law judge, shall be entitled to reimbursement from the governing~~
23 ~~board for the expenses, or the governing board, having paid its~~
24 ~~portion and the employee's portion of the expenses of the hearing,~~
25 ~~including the cost of the administrative law judge, shall be entitled~~
26 ~~to reimbursement from the employee for that portion of the~~
27 ~~expenses.~~

28 (f) The hearing provided for in this section shall be conducted
29 in a place selected by agreement among the members of the
30 commission. In the absence of agreement, the place shall be
31 selected by the administrative law judge.

32 *SEC. 2. If the Commission on State Mandates determines that*
33 *this act contains costs mandated by the state, reimbursement to*
34 *local agencies and school districts for those costs shall be made*
35 *pursuant to Part 7 (commencing with Section 17500) of Division*
36 *4 of Title 2 of the Government Code.*

37 ~~SECTION 1. Section 72031 of the Education Code is amended~~
38 ~~to read:~~

39 ~~72031. (a) This section applies only to the Los Angeles~~
40 ~~Community College District.~~

1 ~~(b) Whenever in this code a section refers to a district, or to two~~
2 ~~or more districts, governed by a single governing board, or by~~
3 ~~governing boards of identical personnel, or to a district or districts~~
4 ~~in which the average daily attendance is in excess of 400,000, or~~
5 ~~makes a similar reference, all provisions of the section shall apply~~
6 ~~with equal force to both the city school district and community~~
7 ~~college district.~~

8 ~~(c) Members of the governing board of the Los Angeles~~
9 ~~Community College District shall be elected at large in the manner~~
10 ~~established by Chapter 62 of the Statutes of 1968.~~